S.B. Criminal Misc. Petition NO.867/2004
(Suganchand Arya Vs. Mangal Murti Mineral Industries)

Date of order : 22.5.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. R.S. Mankad with
Mr. Dalip Kawadia, for the petitioner.
Mr. A.K. Acharya, for the respondent.

Heard learned counsel for the parties and gone through the impugned order dated 13.8.2004 and perused the entire record of the case and more particularly the complaint filed by the complainant.

It is contended by the learned counsel for the petitioner that according to the complaint itself, the essential ingredients for constituting offence under Section 420 I.P.C. is totally absent, therefore, no case for offence under Section 420 I.P.C. is made out against the petitioner, who is father of co-accused. It is further submitted that the petitioner is only guarantor of co-accused, who is son of petitioner. Therefore, in absence of any cogent evidence against the petitioner, the charge framed against the petitioner for offence under Section 420 I.P.C. deserves to be set aside.

In my opinion, no offence under Section 420 I.P.C. is made out against the petitioner. However,

if any, civil liability is there against the petitioner, then, for the same, the respondent can file suit against him but no evidence with regard to commission of offence under Section 420 I.P.C. is on record for proceeding against the petitioner. It is also obvious from the complainant that the cheque, which was dishonoured, was issued by Jaint Kumar - son of the petitioner, who is facing trial before the trial court. The petitioner cannot be held responsible for offence under Section 138 of N.I. Act because all the allegations are against Jaint Kumar for committing offence under Section 138 N.I. Act.

In this view of the matter, the impugned order dated 13.8.2004, framing charge qua the petitioner for offence under Section 420 I.P.C. is set aside. However, it is expected from the trial court that the trial as against Jaint Kumar be completed expeditiously preferably within a period of four months.

Accordingly, the misc. petition is allowed.

(GOPAL KRISHAN VYAS), J.

arun